

REMARKS

The Examiner's Restriction Requirement

In the present Action, the Examiner acknowledges Applicants' election, without traverse, of Group I as defined in the Office Action dated January 29, 2004. Claims 1-12 as originally filed are directed to the Group I subject matter. The Examiner has withdrawn Claims 13-37, which are drawn to non-elected subject matter. Applicants have therefore cancelled those claims.

Amendment Summary

Claim 1 is amended to further clarify the nature of the emulsifier systems being claimed. Specifically, a range of weight percents for the polyglycerol ester component is included. Support for the limitation ("from 50 to about 99%, by weight") is found in the specification by combining the disclosure of any of Examples 8, 9 and 11 (see second table on p. 28) with the disclosure at p. 11, lines 28-29 (disclosing upper range of about 99% polyglycerol ester). No new matter is added. (*See In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976).)

Claims 13-37 are cancelled, in view of the Examiner's withdrawal of those claims from prosecution.

Claims 38-41 are directed to preferred emulsifier systems. In particular, the claims are drawn to systems containing significant levels of highly functional polyglycerol monoesters. Support for Claims 38-41 is found at p. 10, lines 1-11. No new matter is added.

Traversal of Prior Art Rejections

Claims 1-9 are rejected as being anticipated by WO 99/20125, published by Villagran et al. (hereafter "Villagran"). In short, the Examiner contends that Villagran discloses emulsifier compositions that contain PGEs within the broad scope of Applicants' emulsifier system claims as filed. In rendering the rejection, the Examiner notes that Villagran discloses the use of such emulsifier systems for preparing doughs that are ultimately processed into fabricated snacks.

Claims 10-12 are rejected as being obvious over Villagran. The Examiner contends that while Villagran does not teach the use of lecithin in the described emulsifier systems, the fact that it is a recognized emulsifier makes it obvious to combine lecithin with the other emulsifiers described in Applicants' Claims 1-9.

In view of Applicants' amendments, the Examiner's anticipation and obviousness rejections will be addressed together.

To clarify the claimed invention, Applicants have amended Claim 1 (and indirectly dependent Claims 2-12 and new dependent claims 38-41) to indicate that the emulsifier system

comprises from 50 to about 99%, by weight, of the highly functional polyglycerol esters (PGEs) so described. Applicants submit that Villagran does not describe these emulsifier systems. At page 10 of the reference, Villagran et al. provide that an emulsifier for use in making the described dough compositions will comprise monoglyceride, PGE and fat. At page 12, Villagran et al. state that “[t]he polyglycerol ester component comprises from 0.5% to about 40%, preferably from about 0.1% to about 35%, more preferably from about 1.5% to about 30% and *most preferably 2.0% to about 25%* of the total emulsifier component.” (Emphasis added.) Further on at page 12, Villagran indicates that the emulsifier composition will comprise from about 60% to about 97.5% fat.

Clearly, then, Villagran does not describe Applicants' present emulsifier systems, which now require at least 50%, by weight, PGE. Applicants submit that on a fair reading of Villagran, one would not have been motivated to make Applicants' claimed emulsifier systems, particularly in view of the fact that Villagran's most preferred systems contain only up to about 25% PGE. This is not surprising, given that the systems used by Villagran were for the preparation of dough compositions. In contrast, Applicants discovered that emulsifier systems containing relatively high levels of PGEs are particularly useful in preparing dehydrated starch ingredients. Villagran, or any other prior art reference, suggests no such use of Applicants' described PGEs.

Furthermore, Applicants submit that there was no motivation to modify the Villagran emulsifier systems to arrive at Applicants' claimed systems. Indeed, based on Villagran's preferred compositions, the reference actually teaches away from emulsifier systems having such high levels of PGEs. Based on the foregoing, Applicants submit that Claims 1-12, as amended, are allowable over Villagran.

Applicants have added new Claims 38 and 39, which depend from Claim 1. These claims are directed to emulsifier systems containing polyglycerol monoesters (PGME; i.e., polyglycerols with only 1 hydroxy group that is esterified), where at least 40% of the PGMEs are diglycerol monoesters (i.e., the polyglycerol has 2 glycerol units and only 1 hydroxy group on the diglycerol is esterified). In addition to the arguments made with respect to Claim 1, Applicants submit that Villagran in no way describes or suggests emulsifier systems containing these preferred, highly functional emulsifiers.

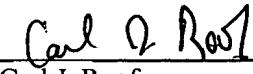
Applicants have also added new Claims 40 and 41, which also depend from Claim 1. These claims are directed to an emulsifier system containing significant levels of PGME where the PGME component is made up of diglycerol monoesters and triglycerol monoesters. Again, in addition to the arguments relevant for Claim 1, the limitations concerning the inclusion of the di- and triglycerol monoesters is simply not taught or suggested by Villagran.

Based on the foregoing, Applicants request the allowance of new Claims 38-41.

CONCLUSION

Applicants have amended the claims to further define the scope of the claimed invention. Based on those amendments, Applicants submit that the Section 102 and 103 rejections over the Villagran reference are allowable. Allowance is respectfully requested.

Respectfully submitted,



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